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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

J THOMPSON, et al., Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

1-800 CONTACTS, INC., et al.,

Defendants.

) No. 2:16-cv-01183  
)  
) CLASS ACTION  
) Honorable Judge Tena Campbell  
) Honorable Magistrate Judge Dustin B. Pead  
)  
) PLAINTIFFS' APPLICATION FOR LEAVE  
) TO FILE OVERLENGTH MEMORANDA IN  
) SUPPORT OF MOTIONS FOR (1) FINAL  
) APPROVAL OF CLASS ACTION  
) SETTLEMENTS, APPROVAL OF THE  
) PLAN OF DISTRIBUTION, AND FINAL  
) CERTIFICATION OF THE SETTLEMENT  
) CLASSES, AND (2) AWARD OF FEES,  
) COSTS, AND SERVICE AWARDS

Pursuant to DUCivR 7-1(e), plaintiffs file this motion for leave to extend the page limits of DUCivR 7-1(a)(3)(C) for Plaintiffs' Motions for (1) Final Approval of Class Action Settlements, Approval of the Plan of Distribution, and Final Certification of the Settlement Classes, and (2) Award of Fees, Costs, and Service Awards. Plaintiffs offer the following as good cause in support of their request:

1. Previously, the Court had granted preliminary approval to three settlements with Defendants National Vision, Inc.; Arlington Contact Lens Service, Inc.; Luxottica of America Inc.; Vision Direct, Inc.; Walgreens Boots Alliance, Inc.; and Walgreen Co. *See* ECF Nos. 150, 248, 273.
2. On June 3, 2020, this Court entered an order preliminarily approving the proposed settlement with the remaining defendant 1-800 Contacts, Inc. and conditionally certifying a 1-800 settlement class. *See* ECF. No. 325. In the same order, the Court: (i) authorized a program for providing notice to the settlement classes; and (ii) preliminarily approved a plan of distribution for the 1-800 settlement, as well as the three previously preliminarily approved settlements. The Order provided that all papers in support of final approval of the four proposed settlements and the Fee and Expense Application and proposed service awards related to those settlements shall be filed by August 22, 2020.

3. Pursuant to Local Rule, plaintiffs' motions cannot exceed 10 pages in length. DUCivR 7-1(a)(3)(C).

4. Under Local Rule, “[i]f a motion or memorandum is to exceed the page limitations set forth in this rule, leave of court must be obtained.” DUCivR 7-1(e). Plaintiffs respectfully request that the page limit for their motions be enlarged from 10 pages to up to 25 pages for each motion.

5. Plaintiffs have good cause for this request. Given the breadth of the issues contained in the two motions and the overall complexity of this case, plaintiffs and their counsel cannot fully and adequately address the relevant law and facts within the page limitations imposed by the Local Rules.

6. Plaintiffs' final approval motion must describe the history of the litigation, explain the key terms and set forth the reasons why four separate settlements meet the standard for final approval. There are also procedural requirements plaintiffs must address pursuant to Rule 23 in support of their motion for final approval, including discussing the nature of negotiations, the benefit to the Classes of immediate recovery, and an analysis of relevant questions as to law and fact. Plaintiffs' motion will also demonstrate that certification of the proposed settlement classes is justified, and that the numerosity, commonality, typicality, and adequacy requirements for certification under Rule 23 are satisfied. Fed. R. Civ. P. 23(a). Finally, the motion must explain why the plan of distribution is fair and reasonable, and describe plaintiffs' efforts to notify each class of the pendency of the settlements.

7. Plaintiffs' fee and expense motion must describe the work done over the three-and-a-half years that this action has been pending, describe the legal standard for granting an award of attorneys' fees in a class case, and discuss and apply the eleven pertinent *Johnson* factors applied by courts within the Tenth Circuit when considering fee requests in common fund cases. Additionally, plaintiffs' motion must address the various expenses they have incurred in prosecuting the action and explain how they are reasonable, and discuss the service awards sought on behalf of each class representative.

8. Accordingly, plaintiffs seek leave to extend the page limit for their: (i) Motion for Final Approval of Class Action Settlements, Approval of the Plan Of Distribution, and Final Certification of the Settlement Classes; and (2) Motion for Award of Fees, Costs, and Service Awards, from 10 pages to 25 pages for each motion.

DATED: August 18, 2020

Respectfully submitted,

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Interim Lead Counsel for the Putative Class

DATED: August 18, 2020

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